

WATER POWER OF THE GREAT FALLS OF THE POTOMAC.

MAY 19, 1898.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. KING, from the Committee on the District of Columbia, submitted the following

REPORT.

[To accompany S. 1754.]

The Committee on the District of Columbia, to whom was referred the bill (S. 1754) to acquire by purchase or condemnation land and water rights at the Great Falls of the Potomac, after careful consideration of the subject, report the same back to the House with the recommendation that H. R. 7133, relating to the same subject, be laid upon the table, and that S. 1754 be amended by striking out all after the enacting clause and inserting the following:

That the Secretary of War is hereby directed, for the purposes hereinafter mentioned, to obtain title for the United States, by right of eminent domain, as herein provided, to lands upon each side of the Potomac River at the Great Falls not now owned by the United States, extending from a point at or near the Government dam to a point at or near where Difficult Run enters the Potomac River, and extending back from the waters of the river upon each side not more than one-half mile, together with the title to Conns Island and to other islands in the river between the points named, including water and other rights and privileges appertaining to said lands and islands or otherwise existing between said boundaries: *Provided*, That the canal and lands and water rights of the Chesapeake and Ohio Canal Company, on the Maryland side of the river only, are hereby excepted from the operation of this act.

SEC. 2. That the Secretary of War shall, within three months after the approval of this act, cause a survey to be made of such of the lands and islands within the general description in section one of this act as in his judgment may be required for the construction and maintenance of canal, power house, and other buildings necessary to the employment of the water rights and privileges aforesaid for generating electricity for use in the District of Columbia, and for other public purposes, and shall cause a map to be made thereof, clearly defining the boundary lines of all the lands and islands so required, and shall prepare a written statement, in triplicate, specifying by metes and bounds the lands, and by proper designation the water and other rights and privileges, to be acquired hereunder; and shall file said map and statement in the office of the recorder of deeds in the District of Columbia, the county of Fairfax, Virginia, and the county of Montgomery, Maryland, respectively, which filing shall be a taking by the United States of the lands and water and other rights and privileges described and designated in said map and statement.

SEC. 3. That to further carry out the purposes of this act the Attorney-General shall, after the filing of said map and statement, and at the request of the Secretary of War, cause proceedings to be commenced by petition, in the name of the United States, in the supreme court of the District of Columbia, for the condemnation of the lands and rights described and designated in such map and statement to the use

of the United States, making the known owners of the lands and water rights taken, the title to which is not in the United States, parties defendant; and all persons interested therein, but not known to the Attorney-General, may be made parties defendant under the title "unknown owners." Notice to the known owners shall be by personal service of summons, with a copy of the petition, which may be served by any United States marshal in any judicial district where such owner or owners reside, and to the "unknown owners" by publication of a notice in newspapers, to be designated by the court, published in said District of Columbia and in said counties, specifying the nature of the proceeding and the time when the matter will be heard, such notice to be published for thirty consecutive days in the District of Columbia and once a week for four consecutive weeks in said counties, and such other notice as the court may order. The court may, in its discretion, appoint guardians ad litem of minors or other persons under disability or suitable representatives of unknown owners. Said court shall, in general term, prescribe rules of procedure conformable to practice in like cases, to give the owners a fair hearing and secure speedy determination of the rights of the parties, and shall designate a judge of said court to hear said cause at a special term; said court shall forthwith, after service and expiration of said notice, summon a jury of disinterested persons to inquire into and assess, under instructions of the court, the compensation and damages, if any, to be paid the owners for such lands and water rights; but in assessing such compensation and damages there shall be considered only the values of the land and water rights at the time of such taking, and the value of such properties for the uses for which they are taken or to which they may be applied under the provisions of this act shall not be considered. The jury shall make a report of their inquisition and findings to the court; and on confirmation thereof by the court judgment shall be rendered thereby, condemning said lands and water rights to the use of the United States, and ordering that upon payment of the damages and compensation assessed as aforesaid to the owner or owners of the lands and water rights so condemned, or upon payment of the same into court for their benefit, all their right, title, and interest in and to such lands and water rights shall become vested in the United States. The Attorney-General may appoint special counsel for the United States familiar with the laws relating to riparian rights and hydraulics.

SEC. 4. That said court shall have and entertain jurisdiction of the proceedings herein authorized, and from judgments thereby rendered in such proceedings appeals may be taken as in other cases. Where claims are now pending in any court against the United States for compensation or damages for taking water at the Great Falls and the damaging of property by reason of such taking, such claims may be heard and determined in the proceeding hereunder.

SEC. 5. That for the purpose of paying the costs and expenses incurred in carrying out the provisions of this act, including court costs, jury and witnesses' fees, special counsel, engineering, and other expenses, the sum of five thousand dollars, or so much thereof as may be necessary, is hereby appropriated.

The object of the bill which has passed the Senate, as well as the substitute bill now reported by this committee, is to acquire by the exercise of the power of eminent domain all the land and water rights at the Great Falls of the Potomac, not now owned by the United States, excepting the rights of the Chesapeake and Ohio Canal Company on the Maryland side of the river. The bill provides that the Secretary of War shall, within three months after the approval of this act, cause a survey and map to be made of the lands and islands required, clearly defining the same, and shall prepare a written statement specifying by metes and bounds and proper designations the grants and water rights to be taken. This map and statement are to be filed in the offices of the recorders of deeds in the District of Columbia, the county of Fairfax, Virginia, and the county of Montgomery, Maryland; and the filing of the map and statement shall be a taking by the United States of the lands, grants, and water rights described and designated in said map and statement.

The bill vests in the supreme court of the District of Columbia jurisdiction to hear and determine the question of compensation to be paid the owners of the lands and water rights taken. It provides the processes for bringing all parties before the court who are interested in the lands and water rights taken; gives power to make proper rules for the procedure; the summoning of a jury to hear and determine, under the

instruction of the court as in other cases, the compensation and damages to be paid for said lands and water rights. It further provides that "in determining such amounts there shall be considered only the values of the lands and water rights at the time of such taking, and that the value of such properties to the city of Washington for the uses for which they are taken or to which they may be applied under the provisions of this act shall not be considered;" the object of this last provision being to confine the court and jury, in determining the question of damages to be paid, to the market value of the property and rights for the general purposes to which they are applicable, and not to permit the jury to determine the case with reference to the special necessities of the city of Washington for this water. This is in accordance with the law applicable in such cases. (*U. S. v. Senfert Bros. & Co.*, 78 Fed. Rep., 520.) Judgment is to be entered upon the findings, and appeals are permitted as in other cases. An appropriation of \$5,000 is made to defray the costs and expenses incurred, including court costs, jury and witnesses' fees, special counsel authorized by the bill, engineering, and other expenses in connection with the condemnation proceedings.

The bill, as it passed the Senate, was referred to the Attorney-General, and has received his approval with the amendments now proposed by the committee in the form of a substitute. The Commissioners of the District report that the bill is of great importance to the residents of the District, and is cordially approved by the former. As a condemnation act for the purpose mentioned, the bill is complete and fully protects the rights of both the United States and the owners of the property to be taken. The tribunal selected for the purpose of ascertaining the compensation to be paid is the most convenient for all parties and has had considerable experience in the trial of such causes, and its selection, the committee understand, is satisfactory to all parties.

2. The subject of acquiring this property was before the Fifty-third and Fifty-fourth Congresses and was made the subject of exhaustive research and study. Reports were made by the District Commissioners, Captain Burr, of the Corps of Engineers, Col. George H. Elliott, Colonel of Engineers, Gen. Thomas L. Casey, Chief of Engineers, and Capt. D. D. Gaillard, Corps of Engineers, all of whom have been in charge of the water-works system of the District of Columbia. In a case entitled, *The Great Falls Manufacturing Company v. The United States*, heard and determined in the Court of Claims at the December term, 1880, reported in volume 16, Court of Claims reports, at page 160, there is to be found, collated in the findings of facts by the court, much information which has been considered by the committee. From the foregoing sources the following facts are established:

The Great Falls are located about 16 miles above the city of Washington, and consist of a series of rapids in the Potomac River extending about 2,000 feet, in the course of which the river falls about 76 feet. From the foot of these rapids to the tide level there is a further descent of the river of about 70 feet. Commencing at a point just above these rapids the island known as "Conns Island" extends up the river for about one-half mile, lying nearly parallel with the Maryland shore and considerably nearer to the Maryland than to the Virginia shore. The island is of irregular width, averaging about 800 feet; it is also of irregular height, and from its head to the dam near the foot of the island there is a descent of the river of about 5 feet. From Conn's Island to the Virginia shore it is about 1,400 feet. In the rapids and

just below the Government dam, hereinafter mentioned, is what is known as "Falls Island" which again divides the river, the main body of which passes to the west or on the Virginia side of the channel. The Maryland side of the river is rocky and precipitous; on the Virginia side the foothills are somewhat retired from the river, leaving a kind of plateau extending along opposite the falls. Through this plateau passed the Batteaux Canal, constructed in 1785 by the old Potomac Company, of which General Washington was president, for a portage for boats around the falls. On the Maryland side is the Chesapeake and Ohio Canal, which runs a little back from the river, leaving a strip of land between it and the shore.

Before the construction of the works of the Government about 98 per cent of the water of the river passed through the Virginia channel between Conns Island and the Virginia shore, and 2 per cent through the Maryland channel between Conns Island and the Maryland shore, the total minimum flow of the water being estimated at about 1,065 cubic feet per second, or about 700,000,000 gallons per diem. The record of the amount of water passing over the Government dam has been kept since the completion of the dam in 1886, and from this and other data the minimum effective horsepower at the falls is estimated at from 8,500 to 10,000 horsepowers.

3. The feasibility of using this water power at the Great Falls for the purpose of lighting by electricity the public buildings, grounds, and streets of the District of Columbia and operating the elevators, printing presses, and other machinery in the Government buildings and at the navy-yard has been fully considered and recommended by the United States engineers.

4. It is stated in an able report made by Col. George H. Elliott that the water supply for the District of Columbia was first provided for under various acts and appropriations prior to 1882, the maximum supply being about 25,000,000 gallons of water daily. In the year 1882 the dam was extended across Conns Island to the Virginia shore and the maximum quantity of water provided for was increased by 25,000,000 gallons per day; and in 1895 provision was made to raise the dam about $2\frac{1}{2}$ feet, thereby increasing the maximum amount of water available for domestic use 25,000,000 gallons per day additional, making a total maximum capacity at present of about 75,000,000 gallons per day. It is estimated, in the report referred to, that "other increases of the amount of water required for the supply of Washington will be necessary from time to time, and it is estimated that not less than 200,000,000 gallons per day will ultimately be required."

5. *Ownership.*—(a) The boundary line between the States of Virginia and Maryland is the low-water mark on the Virginia side of the river, leaving the title to the bed of the stream in the State of Maryland.

(b) In 1824 a charter was granted by the State of Maryland to the Chesapeake and Ohio Canal Company. That company constructed a canal from Georgetown to Cumberland, a distance of 185 miles, on the Maryland side of the river. The canal has a prior right to draw water from the river at different points and above the falls for the purpose of filling its canal, and is given the right to lease the "waste water"—that is, the water flowing from the opening of the locks—for power purposes. This company also succeeded to whatever rights the old Potomac Canal Company possessed.

(c) On the 3d day of March, 1853, Congress appropriated \$100,000 for the purpose of bringing water into the city of Washington upon

such plans and from such places as the President should approve, provided, "that if the plan adopted by the President of the United States should require water to be drawn from any source within the limits of the State of Maryland, the assent of the legislature of that State should first be obtained." On the 3d day of May, 1853, the legislature of Maryland passed a statute, referring to this act, and giving consent to the United States to purchase such lands and to construct such dams, reservoirs, buildings, and other works, as were necessary for the purpose of taking water from the Potomac River at the Great Falls and conducting to the city of Washington for the purpose of supplying the city of Washington with water. This act further provided "that nothing in this act shall be construed or understood as to authorize the United States to interfere with the rights now vested in the Chesapeake and Ohio Canal Company or with the rights granted by said company to individuals," and provision was made for the condemnation of lands and rights belonging to private parties. The Government afterwards acquired about 20 acres of land, upon which is now located the Gate House, on the Maryland side, at the end of its dam and conduit; the right to construct the dam across the channel from the Maryland shore to Conns Island; the undivided one-half of lands lying between the Chesapeake and Ohio canal and the river on the Maryland side for about 2 miles opposite the falls; the undivided one-half of Falls Island, and constructed its aqueduct, on the Maryland side of the river, to the city of Washington.

(d) The Great Falls Manufacturing Company, a corporation organized under the laws of the State of Virginia, as shown by the record in the Great Falls Case in the Court of Claims, owned about 1,000 acres on the Virginia side of the river, extending from above the falls to Difficult Run, the whole of Conns Island (except such as has been acquired by the United States), the undivided one-half of Falls Island, and the undivided one-half of lands adjoining the river on the Maryland side between the canal and the river, and some other small islands; the ownership on the Virginia side being subject to the claim, if any, of the Chesapeake and Ohio Canal Company to the old Potomac Canal. By an act of the State of Virginia, approved March 3, 1894, the Great Falls Power Company was organized for the purpose of "acquiring, holding, improving, and using water power at and near the Great Falls, in the Potomac River, and for constructing dams therein, canals, and other hydraulic and auxiliary steam works, which acts are hereby authorized, and for the selling and leasing of water power, and for using the same for manufacturing and other purposes, and for generating, transmitting, selling, and leasing electricity, electric power and light for railway and canal as well as other purposes, including also power to acquire by right of eminent domain, in case the use is public or by purchase or otherwise, and to hold and improve real and personal property for the foregoing purposes in Virginia or elsewhere, and to sell, lease, and mortgage the same, subject to all laws of the State of Virginia now in force in relation to other like corporations."

By an act of the State of Maryland, approved April 6, 1894, the Great Falls Power Company was granted—

The right to erect such dam or dams or other structures in the Potomac River in this State, between the Great Falls and the United States Government aqueduct dam, as may be necessary to use the water and water power at or near Great Falls for the purposes and objects set forth in its charter: *Provided*, That nothing in this act shall be construed to give said Great Falls Power Company authority to interfere with any existing right of the United States or of any person or corporation in said Potomac River or the waters thereof: *Provided*, That the acceptance of this act

shall oblige and bind the said Great Falls Power Company to take, occupy, use, interfere with, or damage no property or right vested in the Chesapeake and Ohio Canal Company, acquired as the successor of the Potomac Company or otherwise, and to endanger no part of the canal or works of said canal company in any degree by liability to flood, except by or under written agreement or agreements between said power company on the one part and the said canal company and the trustees for the time being as the bondholders of said canal company under its mortgage of 1848 and 1878 on the other part, and approved by the board of public works.

The Great Falls Manufacturing Company thereupon conveyed all lands, islands, rights, etc., which it possessed in the river and upon the Virginia and Maryland sides thereof to the Great Falls Power Company. By virtue of its ownership of said lands and islands, and the grant from the State of Virginia, and especially its grant from the State of Maryland, the Great Falls Power Company claims to own and control the entire water rights at the Great Falls subject only, first, to the prior right of the Chesapeake and Ohio Canal Company to take water from above the falls for the purpose of filling its canal on the Maryland side, and second, to the rights of the United States acquired under the proceeding in the Court of Claims and hereinafter more fully mentioned. The Great Falls Power Company claims that the old Potomac canal on the Virginia side has been abandoned for over one hundred years, and that it and its predecessor, the Great Falls Manufacturing Company, have been in full and unquestioned possession thereof for more than forty years. With this controversy, however, the United States has nothing to do. The bill only excepts from its operation the lands and rights of the Chesapeake and Ohio Canal Company on the Maryland side.

6. In July, 1858, there was a proceeding before the sheriff of Montgomery County, Md., and a jury to assess the damages which the dam of the Washington Aqueduct, proposed to be constructed, should cause to the Great Falls Manufacturing Company. On August 20, 1858, damages were awarded in the sum of \$150,000. Upon application to the circuit court of Montgomery County, Md., this inquisition was set aside. Nothing further was done by way of condemnation or purchase until November, 1862, when the Secretary of the Interior, charged with the direction and control of the work, entered into an agreement with the Great Falls Manufacturing Company to arbitrate the question of damages. This board consisted of Jesse L. Williams, of Indiana; Hon. B. R. Custis, of Massachusetts; Hon. G. Swan, of Ohio; Hon. Linus Child, of Massachusetts, and Hon. George M. Dallas, of Pennsylvania, distinguished jurists and men eminently fitted to determine the questions of law and fact involved. This board reported four plans for taking water at the Great Falls. The fourth and cheapest consisted of a dam from the Maryland shore to Conns Island across the small channel of the river, leaving the principal channel on the Virginia side unaffected by the improvement, the crest of the dam to be 148 feet above tide. The damages awarded, if the fourth plan was adopted by the Government, were \$15,692. The Government adopted the fourth plan and suit was brought in the Court of Claims to recover the amount of the award. Without reviewing the questions involved it is sufficient to say that the Court of Claims held that the United States was liable for, and that the Great Falls Manufacturing Company was entitled to recover, the said sum of \$15,692 for all damages which, the court say, "they may legally claim by reason of the substantial adoption and execution by the United States of the fourth plan of operations set forth in the agreement sued upon in the amended petition." This case was carried to the Supreme Court of the United

States and the judgment was affirmed by that court. (United States v. Great Falls Manufacturing Company, 112 U. S., 645.)

The first improvement being insufficient to furnish the water supply needed, the Government in 1882 extended the dam from Conns Island across the main channel to the Virginia shore, the total length of the dam now being 2,877 feet. This, according to the engineer's report, increased the quantity of water that could be taken about 25,000,000 gallons per day. The dam was so constructed that it diverted a substantial amount of the water of the main channel from the Virginia to the Maryland shore. Thereupon the Great Falls Manufacturing Company brought suit in the Court of Claims, under date of January 9, 1889, against the Government to recover damages, first, for the increased amount of water diverted from the falls, and secondly, for diverting the main channel of the river from the Virginia to the Maryland shore, thereby increasing the expense, to the Great Falls Manufacturing Company, of utilizing the surplus water for power purposes. The damages claimed in this suit are \$500,000, and the suit is still pending and undetermined.

In 1895, under the provisions of an act of Congress, the height of the dam was increased about $2\frac{1}{2}$ feet the entire length from the Maryland to the Virginia shore, thereby increasing the maximum amount of water taken about 25,000,000 gallons per day. For this additional taking the Great Falls Power Company has commenced suit in the Court of Claims, under date of February 28, 1896, claiming \$273,000 damages on account of the raising of the dam. This suit is also pending and undetermined.

It would appear from the result of the case above referred to (112 U. S., 645), that the United States are liable for any damages caused by permanently diverting water from above the falls. Under the first condemnation, for which the Great Falls Manufacturing Company was paid \$15,692, the Government acquired the right to divert water from the river according to "the fourth plan of operations set forth in the agreement" above referred to. It would seem, therefore, that the Government is liable for additional diversions which it has made, and which it may hereafter make, of water in excess of that diverted by the plan referred to, if any damages result from such diversion. The measure of damages is thus stated by the Supreme Court of the United States in *Boom Company v. Patterson*, 98 U. S., 403, 407, 408:

In determining the value of land appropriated for public purposes, the same considerations are to be regarded as in a sale of property between private parties. The inquiry in such cases must be what is the property worth in the market, viewed not merely with reference to the uses to which it is at the time applied, but with reference to the uses to which it is plainly adapted; that is to say, What is it worth from its availability for valuable uses. Property is not to be deemed worthless because the owner allows it to go to waste, or to be regarded as valueless because he is unable to put it to any use. Others may be able to use it, and make it subserve the necessities or conveniences of life. Its capability of being made thus available gives it a market value which can be readily estimated.

The rule is also stated as follows:

Where the diversion complained of results in actual injury to the complainant, the measure of damages is to be estimated by the actual loss which he has sustained, and the expense to which he has been put by reason of such diversion or the value of the use of the water during the time of diversion. (*Am. and Eng. Ency. of Law*, vol. 28, p. 983, and cases cited.)

Considering the probable liability of the Government in the pending suits for additional diversions since the first taking, and the report of Colonel Elliott that the water supply for the city of Washington will

probably have to be increased from 75,000,000 to 200,000,000 gallons per day in the future; and also considering the annoyance of having a divided ownership at the Great Falls, your committee are of the opinion that all the water and riparian rights at the Great Falls necessary for the control and use of the entire flow of the water should be acquired at this time. There are no improvements now at the Great Falls except the aqueduct and dam, built and owned by the United States. If the Government is ever to acquire control it should be before any outlay is made by the other owners. As stated in the Senate report upon this bill—

There can be no question of greater importance to the people of any large city than that of securing a sufficient supply of water, pure in quality and with a reserve in quantity ample for the demands of the future. Here it is not merely a local question, but one of importance to the whole country as well. Washington is the temporary residence of thousands, and is visited annually by millions coming from all parts of the country. The United States owns a large share of the property. The public buildings, parks, and grounds, as a whole, are the finest in the world. The demand for new buildings and other improvements will be frequent and imperative, as the machinery of government must continually and steadily increase with the increase of population of the whole country. Whatever concerns the welfare of this city, therefore, will become more and more of general interest.

The present supply of water is not sufficient in quantity or force for present needs; some action must, therefore, be taken at once.

Your committee therefore recommend that, in one action, the entire rights at the falls be acquired under the provisions of this bill.

7. The rights of the Chesapeake and Ohio Canal Company to take water at different points in the river for the purpose of filling its canal on the Maryland side take precedence of all other claims; but we see no reason, as there is a sufficient amount of water remaining for the District and for all purposes required by it, for taking or affecting the rights of the canal company on the Maryland side. These rights, therefore, are excepted from the operations of this act. The company, however, should be a party to the proceeding for the purpose of cutting off any rights or claims to the old Potomac Canal on the Virginia side, and under the provisions of the bill this will be done.

8. The question has been suggested by some as to the rights of the State of Maryland as the owner of the bed of the river. This ownership and the rights thereunder is thus stated by the Supreme Court in *Illinois Central v. Illinois* (146 U. S., 387-452-453):

It is a title held in trust for the people of the State that they may enjoy the navigation of the waters, carry on commerce over them, and have liberty of fishing therein freed from the obstructions or interferences of private parties. * * * The control of the State for the purposes of the trust can never be lost, except as to such parcels as are used in promoting the interest of the public therein, or can be disposed of without any substantial impairment of the public interest in the lands and waters remaining.

This title of the State, therefore, is not one that would interfere with the United States in the use of the water for domestic and power purposes. The State, as above noted, has already granted to the United States the right to put a dam and other structures in the river for the purpose of diverting the water for supplying the city of Washington. (Act May 3, 1853). And in the act of April 6, 1894, authority was given the Great Falls Power Company to erect such "dam or dams, or other structures" in the river as may be necessary to use the water and water power at the Great Falls for the purposes and objects set forth in its charter. These objects are stated in the charter to be—

For the purpose of acquiring, holding, improving, and using water power at and near the Great Falls in the Potomac River, and for constructing dams therein, canals

and other hydraulic and auxiliary steam works, which acts are hereby authorized, and for the selling and leasing of water power, and for using the same for manufacturing and other purposes, and for generating, transmitting, selling, and leasing electricity, electric power and light, for railway and canal as well as other purposes, including also power to acquire by right of eminent domain in case the use is public, or by purchase or otherwise, and to hold and improve real and personal property for the foregoing purposes in Virginia and elsewhere; and to sell, lease, and mortgage the same.

Under the reasoning of the Supreme Court in the Illinois case it can not be doubted that the legislature of Maryland had the right to make these special grants. If these rights of the power company are acquired by condemnation under this bill, then the United States will have the right to use the water for all purposes and will entirely control the Great Falls. The scope of the bill, therefore, is complete and includes all of the property rights at the Great Falls which it is desirable for the United States to acquire.

9. Question has been raised as to the power to confer jurisdiction upon the supreme court of the District of Columbia to ascertain and fix the damages to be paid for the lands and rights taken. This subject has been carefully considered by the committee, and it is found that the Supreme Court of the United States has fully covered the matter. In the case of *Kohl et al. v. United States* (91 U. S., 367, 375), the law is stated as follows:

The right of eminent domain exists in the Government of the United States, and may be exercised by it within the States, so far as is necessary to the enjoyment of the powers conferred upon it by the Constitution. Doubtless Congress might have provided a mode of taking the land and determining the compensation to be made, which would have been exclusive of all other modes. They might have prescribed in what tribunal or by what agents the taking and ascertainment of the just compensation should be accomplished. The mode might have been by a commission, or it might have been referred expressly to the circuit court.

And in the case of *Jones v. United States* (109 U. S., 513-519), the court say:

The proceeding for the ascertainment of the value of the property and consequent compensation to be made is merely an inquisition to establish a particular fact as a preliminary to the actual taking; and it may be prosecuted before commissioners or special boards or the courts, with or without the intervention of a jury, as the legislative power may designate. All that is required is that it shall be conducted in some fair and just manner, with opportunity to the owners of the property to present evidence as to its value, and to be heard thereon. Whether the tribunal shall be created directly by an act of Congress, or one already established by the States shall be adopted for the occasion, is a mere matter of legislative discretion. Undoubtedly it was the purpose of the Constitution to establish a general government independent of, and in some respects superior to, that of the State governments—one which could enforce its own laws through its own officers and tribunals; and this purpose was accomplished. That government can create all the officers and tribunals required for the execution of its powers. Upon this point there can be no question.

The bill under consideration provides that the map and statement to be filed by the Secretary of War clearly defining the boundaries of the land and water rights to be taken shall "be a taking by the United States of the lands, grants, and water rights described and designated in said map and statement." It then provides a fair and convenient tribunal for the ascertainment of the compensation to be paid the owners. This, therefore, brings the act clearly within the spirit and letter of the law as laid down by the Supreme Court in the decisions above quoted.

